

PAUL C. KOHLMAN

IBLA 83-723

Decided August 19, 1983

An appeal from a decision of the Montana State Office, Bureau of Land Management, denying alternative requests to lease lands for oil and gas under a no-surface-occupancy stipulation or to suspend oil and gas lease offer M-47348 for an indefinite period pending availability of requested lands for oil and gas leasing.

Affirmed.

1. Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Land Subject to--Withdrawals and Reservations: Effects of

Land which has specifically been withdrawn from mineral leasing is not available for disposition under the Mineral Leasing Act and an offer for such land must be rejected.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Suspension

Where an offer to lease lands cannot be accepted because the lands are not available for leasing, the offer will be rejected and not held in suspense until the land may become available for leasing.

APPEARANCES: Paul C. Kohlman, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Paul C. Kohlman appeals from a June 6, 1983, decision of the Montana State Office, Bureau of Land Management (BLM), denying his request to lease certain lands for oil and gas with a no-surface-occupancy stipulation or to suspend his oil and gas lease offer M-47348 for an indefinite period pending availability of the lands.

Appellant filed oil and gas lease offer M-47348 on June 23, 1980, for public lands in secs. 31, 32, T. 34 N., R. 20 W., and secs. 4, 5, 6, 7, 8, 9,

10, 15, T. 33 N., R. 20 W., Principal meridian, Flathead County, Montana. 1/ In a decision dated May 11, 1983, BLM rejected the offer in part for those lands in secs. 4, 9, 10, and 14 within the Flathead River wild and scenic river withdrawal. 2/ BLM stated that it was without authority to lease the subject lands because regulations authorizing leasing on such lands did not exist. On May 24, 1983, appellant filed a request with BLM that the lands rejected as within the wild and scenic river withdrawal be leased with a no-surface-occupancy stipulation, arguing that section 9(a) of the Wild and Scenic River Act does not preclude such leasing. Appellant requested, in the alternative, that either his offer or a lease issued to him for the subject lands be held in suspense until such time as the lands are opened to leasing through regulations promulgated by the Secretary. Those requests were denied by BLM in its June 6, 1983, decision.

In conjunction with his arguments for leasing or suspension, appellant asserts in his statement of reasons that he has established a priority for the lands in question, and he contends that this priority should be protected by suspending his offer until the lands are opened to leasing.

[1] Appellant's perception of the situation is based on an assumption that the subject lands are unavailable to leasing due to an absence of regulations authorizing such leasing. Section 9(a) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1280(a) (1976), reads in part:

(iii) subject to valid existing rights, the minerals in Federal lands which are part of the [national wild and scenic rivers system] and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this chapter or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

Section 9(a)(iii) permanently withdraws from appropriation under the mineral leasing laws Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of a river designated pursuant to the Act. The record reflects that the lands in question withheld by BLM from leasing are within subdivisions partially or totally within the statutory withdrawal.

1/ The description in appellant's offer, M-47348, appears as follows:

"Township 34 North, Range 20 West, M.P.M.

Section 31: All

Section 32: W 1/2, SE 1/4, SW 1/4 NE 1/4

Township 33 North, Range 20 West, M.P.M.

Section 4: All that part lying outside of Glacier National Park

Section 10: All that part lying outside of Glacier National Park

Section 15: All that part lying outside of Glacier National Park

Section 5: All Section 8: All

Section 6: All Section 9: All

Section 7: All"

2/ BLM also rejected other lands requested in the offer because some are included in a previously issued lease and some are within the Glacier National Park. Appellant does not appeal those conclusions.

Lands which have been specifically withdrawn from mineral leasing are not available for disposition under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1976), and an offer for such lands must be rejected. Rachalk Production, Inc., 71 IBLA 374 (1983); Golden Eagle Petroleum, 67 IBLA 112 (1982). Thus, BLM is without authority to lease the subject lands, even subject to a no-surface-occupancy stipulation. Lands withdrawn from leasing remain so until there is a formal revocation or modification of the order which effected the withdrawal. Rachalk Productions, Inc., *supra*; AA Minerals Corp., 30 IBLA 259 (1977).

[2] Appellant erroneously asserts a priority by virtue of this filing and improperly requests suspension of the offer. As a general rule, applications which are accepted for filing must be rejected and cannot be held pending future availability of the land when approval is prevented by withdrawal of the land and the land has not been opened to operation of the applicable public land laws. 43 CFR 2091.1. 3/ Thus, it is contrary to general Departmental policy to suspend filed oil and gas lease offers to await the leasability of certain lands. *See* Rachalk Production, Inc., *supra*; Esdras K. Hartley, 23 IBLA 102 (1975).

The rule avoids giving an offeror a preference or priority to which he has no right, and assures to all the public equality of opportunity to file. An offeror is entitled to a priority position if he is "the person first making application for the lease who is qualified to hold a lease." *See* 30 U.S.C. § 226 (1976). An offeror is not qualified to hold a lease for land if it is not available for leasing when the offer is filed. Moreover, appellant has no right to require BLM to act as his agent to hold its offer and to consider it at the time most advantageous to appellant's interests. Rachalk Production, Inc., *supra*.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

3/ Although 43 CFR 2091.1 refers to "public land laws," the Department has applied the policy to applications and offers for mineral leases and other interests in public lands, *i.e.*, rejecting all offers for lands which are not available for the requested disposition at the time such offers are filed. J. G. Hathaway, 68 I.D. 48, 51 (1961).

